

*Judgment of Conviction*

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THE PEOPLE OF THE STATE OF NEW YORK

-against-

RUDOLPH SANTOBELLO

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Indicted for Promoting Gambling 1st Deg.  
and convicted of Possession of Gambling  
Records (Misd.) upon his own confession  
and plea of Guilty.

WHEREUPON it is Ordered and Adjudged by the  
Court, that the said Deft. for this Misdemeanor  
aforesaid whereof he is convicted, be imprisoned  
in the New York City Correctional Institution for  
Men for (1) one year.

A true extract from the minutes.

LEO LEVY  
Clerk

**Motion Withdrawing the Plea of Guilty**

SIRS:

PLEASE TAKE NOTICE, that upon the annexed affidavit of Rudolph Santobello, sworn to the 23rd day of September, 1969, and the affirmation of Joseph Aronstein, dated September 23, 1969 and upon all the proceedings heretofore had herein, the undersigned will move this Honorable Court, on the \_\_\_\_ day of \_\_\_\_\_, 1969, at ten oclock in the forenoon of that day, or as soon thereafter as counsel can be heard, at the Court House, 161 Street and Grand Concourse, County of Bronx, City and State of New York, for an Order, withdrawing the plea of guilty heretofore entered by the above named defendant upon the grounds set forth in the attached affidavits and for such other and further relief as may be just and proper.

Dated, New York, N.Y.

September 23, 1969

Yours, etc.,

JOSEPH ARONSTEIN  
Attorney for Defendant  
Office & P.O. Address  
1650 Broadway  
New York, N.Y. 10019  
Telephone Pl. 7-8671

*Motion Withdrawing the Plea of Guilty.*

To:

CLERK OF COURT;

Hon. BURTON D. ROBERTS,  
District Attorney,  
Bronx County

**Affidavit of Rudolph Santobello Sworn to  
September 23, 1969, in Support of Motion  
Withdrawing the Plea of Guilty**

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF BRONX

[TITLE OMITTED IN PRINTING]

STATE OF NEW YORK )

COUNTY OF BRONX ) ss.

Rudolph Santobello, being duly sworn, deposes and says that he is the above named defendant and that he was arrested on or about November 13, 1968 in the County of Bronx by a person he now knows to be Police Officer Serpico and subsequently indicted by the Grand Jury of Bronx County upon two counts charging violations of the gambling statutes of the State of New York.

Deponent states that he subsequently pleaded guilty to a misdemeanor upon a gambling charge and is now awaiting sentence.

*Affidavit of Rudolph Santobello Sworn to  
September 23, 1969, in Support of Motion  
Withdrawing the Plea of Guilty.*

Deponent states that the time he pleaded guilty the Court failed to inform deponent of the law with respect to the charges contained in the indictment and failed to explain to deponent that under the law the People were required to prove that the writings purported to be policy records were received by him from a person other than a player.

Deponent states that at the time he pleaded guilty the Court failed to inform deponent of the law and, that under the second count of the Indictment, charging possession of gambling records, to wit, writings constituting and representing more than five hundred plays and chances in the playing of policy, and that by his plea of guilty he was surrendering all of his constitutional rights.

Deponent states that he has been informed by his attorney, Joseph Aronstein, that the search and seizure made by Police Officer Serpico was made without a search warrant and in violation of his rights under the Fourth and Fifth Amendments through the Fourteenth Amendment of the Constitution of the United States and that a motion should be made to suppress any evidence obtained by the police in violation of his constitutional rights, and that before and at the time a plea of guilty was entered deponent did not know that he had the right to move to suppress any evidence secured by the police as aforesaid.

Deponent further states that he has been informed by his attorney that from a reading of the Information sworn to by the police officer, Ser-

*Affidavit of Rudolph Santobello Sworn to  
September 23, 1969, in Support of Motion  
Withdrawing the Plea of Guilty.*

pico, in the Criminal Court, that a motion should be made to inspect the minutes of the Grand Jury upon the ground that the evidence adduced before the Grand Jury was insufficient as a matter of law to support the indictment.

Wherefore deponent respectfully prays that this Court make an Order, vacating and setting aside the plea of guilty heretofore entered and for leave to make any and all necessary motions and for such other and further relief as may be just and proper for which no previous application for the relief herein prayed for has heretofore been made.

[Duly sworn to on September 23, 1969]

Rudolph Santobello

**Affirmation of Joseph Aronstein Dated September  
23, 1969, in Support of Motion Withdrawing the  
Plea of Guilty.**

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF BRONX

[TITLE OMITTED IN PRINTING]

Joseph Aronstein, attorney at law, does hereby affirm under the penalties of perjury pursuant to the provisions of Section R2106, C.P.L.R. that he is the attorney for the above named defendant.

*Affirmation of Joseph Aronstein Dated September  
23, 1969, in Support of Motion Withdrawing the  
Plea of Guilty.*

Deponent states that he has informed the defendant that before the Court accepted his plea of guilty the Court was under a duty to explain to him all of the elements of the crime charged in the indictment and to inquire whether the defendant understood the nature of the charge as contained in the indictment and inquire from the defendant precisely what acts were committed by the defendant so that the Court can determine whether in fact the acts admitted to have been committed by the defendant constitutes the charges contained in the indictment.

Deponent has further informed the defendant that it was the duty of the Court to inquire from the defendant whether, as charged in the indictment, count 1, he received from a person other than a player the written records alleged to have been found in his possession used in connection with a lottery and policy scheme.

Deponent has also informed the defendant, that from the sworn allegations of the police officer, Serpico, the search and seizure made by said police officer were illegal having been made without a search warrant in violation of his rights under the Fourth and Fifth Amendments through the Fourteenth Amendment of the Constitution of the United States, and that further, the search made by the police officer of the automobile was also illegal for the same reasons.

*Affirmation of Joseph Aronstein Dated September  
23, 1969, in Support of Motion Withdrawing the  
Plea of Guilty*

Deponent has informed the defendant that the evidence before the Grand Jury must be insufficient to sustain the allegations of the indictment and that this is based upon the sworn allegations contained in the Information filed by the police officer in the Criminal Court in that such information does not state that the policy writings received by him were received by a person other than a player, and further, that the second count of the indictment is duplicitious and void in that such count charges the same crime as is alleged in the first count of the indictment, and that therefore, a motion must be made to inspect the minutes of the Grand Jury that returned the indictment against him, or in the alternative for an Order to dismiss said indictment.

Dated, New York, N.Y.

September 23, 1969

Joseph Aronstein.

**Notice of Motion to Suppress Evidence**

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF BRONX

[TITLE OMITTED IN PRINTING]

SIRS:

*Notice of Motion to Suppress Evidence*

PLEASE TAKE NOTICE, that upon the annexed affidavit of Rudolph Santobello, sworn to the 23rd day of September, 1969, and upon all the proceedings heretofore had herein, the undersigned will move this Honorable Court for an Order, suppressing the evidence secured by the police of the City of New York upon the ground that such evidence was obtained in violation of the rights of the defendant under the Fourth and Fifth Amendments of the Constitution through the Fourteenth Amendment thereof without a search warrant, and for such other and further relief as may be just and proper, on the \_\_\_\_\_ day of September, 1969, at ten o'clock in the forenoon of that day or as soon thereafter as counsel can be heard, at the Court House, 161st and Grand Concourse, County of Bronx, City and State of New York, and for such other and further relief as may be just and proper.

Dated, New York, N.Y.

September 23, 1969

Yours, etc.,

JOSEPH ARONSTEIN  
Attorney for Defendant  
Office & P.O. Address  
1650 Broadway  
New York, N.Y. 10019  
Telephone: Pl. 7-8671

TO:



*Notice of Motion to Suppress Evidence*

CLERK OF COURT;

Hon. BURTON D. ROBERTS,  
 District Attorney  
 Bronx County

**Affidavit of Rudolph Santobello Sworn to  
 September 23, 1969, in Support of Motion  
 to Suppress Evidence.**

SUPREME COURT OF THE STATE OF NEW YORK  
 COUNTY OF BRONX

[TITLE OMITTED IN PRINTING]

STATE OF NEW YORK     )  
   ) ss.  
 COUNTY OF BRONX     )

Rudolph Santobello, being duly sworn, deposes and says; that he is the above named defendant and that he was arrested on November 13, 1968 by a person he now knows to be Police Officer Serpico after he had entered an automobile that was parked at Brook and Bergen Avenues, County of Bronx.

Deponent states that he has read the sworn Information made by Officer Serpico and knows that Officer Serpico, without a search warrant, removed from a compartment in a wall a paper containing what the police officer states is policy writings and that said police officer after placing his initials upon said paper returned the paper to the aforesaid compartment.

*Affidavit of Rudolph Santobello Sworn to  
September 23, 1969, in Support of Motion  
to Suppress Evidence.*

Deponent thereafter removed from said compartment the slip of paper and placed it in his pocket and went to the aforesaid automobile when Officer Serpico arrested him and searched his person and that deponent demanded to know whether Officer Serpico had a search warrant for his person or a search warrant to search the premises and that Officer Serpico told him that he did not need a search warrant.

Deponent states that when the paper was placed in the compartment said paper was not abandoned and that the police officer did not have any right to search said compartment and remove the paper without a warrant to search for and seize the paper and a warrant particularly describing the property to be searched for and seized and that the search and seizure was illegal and in violation of his rights under the Fourth and Fifth Amendments through the Fourteenth Amendment of the Constitution of the United States.

Wherefore deponent respectfully prays that this Court make an Order suppressing any evidence secured by the illegal search made by Officer Serpico in violation of his rights under the Fourth and Fifth Amendments through the Fourteenth Amendment of the Constitution of the United States and for such other and further relief as may be just and proper for which no previous application for the relief herein prayed for has heretofore been made.

[Duly sworn to September 23, 1969]

s/ Rudolph Santobello

**Affidavit of Patrolman Serpico****CRIMINAL COURT OF THE CITY OF NEW YORK  
PART 1A 2, COUNTY OF BRONX**

STATE OF NEW YORK       )  
COUNTY OF BRONX       ) ss.:

PTL F. SERPICO, 19076 of No. 7th Div being duly sworn, says that on November 13, 1968 about 1:10 p.m. at Intersection Brook & Bergen Aves., Bronx County, City and State of New York, the defendant Rudolph Santobello did commit the offense of PL 225.10 Promoting Gambling, 225.20 Possession Gambling Records, in that:

Deponent had said location under observation from 12:30 pm to 1:10 pm, during which time he did observe an unknown male secrete a slip of white paper in wall of said location and then leave. Officer approached said location, removed said slip of paper from wall, examined same, and found it to contain notations representing numerous plays MRHP. Officer initialed same and returned it to wall. At approx. 1:10 pm deponent observed defendant approach said wall, remove said slip of paper, examine it briefly, and place it in his right coat pocket, and then enter an auto registration no. XD2979. Officer approached, identified himself to defendant, and placed him under arrest. From the defendant's possession officer removed a slip of paper bearing officer's initials and approximately 140 plays MRHP with amts. wagered. From the def's possession officer also removed a plastic card case containing three slips of paper bearing approx. 700 plays MRHP and 9 slips representing controller's records from visor of said

*Affidavit of Patrolman Serpico*

car. Officer also removed a white envelope bearing notations representing controller's records. Officer also removed from deponent 636 dollars USC which was counted and returned to defendant.

s/ F. Serpico  
Affiant

[Duly sworn November 13, 1968]

Louis A. Cioffi  
Judge

**Affirmation of Seymour Rotker Dated October  
3, 1969, in Opposition.**

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF BRONX

[TITLE OMITTED IN PRINTING]

SEYMOUR ROTKER, under the penalties of perjury and pursuant to Rule 2106 C.P.L.R., affirms and says:

I am an Assistant District Attorney in the office of the District Attorney of Bronx County, and am fully familiar with all the facts and circumstances herein.

The defendant was indicted on December 9, 1968 and charged in a two-count indictment with Promoting Gambling in the First Degree and pos-

*Affirmation of Seymour Rotker Dated October  
3, 1969, in Opposition*

session of Gambling Records in the First Degree.

On June 16, 1969 he withdrew his plea of not guilty before the Honorable Justice Marks and pleads to the misdemeanor of Possession of Gambling Records in the Second Degree. Thereafter the matter was on for sentence June 30th, September 16th and September 23rd, 1969. Defendant at this posture now seeks permission to withdraw his plea of guilty previously entered. The matter has been set down for October 8, 1969 for determination whether or not defendant will be permitted to withdraw his plea.

The People strenuously oppose defendant's application, as he sets forth no reason or any change of circumstances from the time the plea was entered until the time the motion was made asking leave to withdraw his plea. Furthermore, in order to determine the factual issues in question as it pertains to this matter, the People respectfully request the matter be set down for a hearing.

WHEREFORE, the People pray the defendant's motion be in all respects denied, and in the alternative, if the Court feels there is any justification to grant the motion, the People request a hearing to determine the issues as it pertains to this matter.

Dated, Bronx, New York,  
October 3, 1969.

SEYMOUR ROTKER

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**Plea**

SUPREME COURT : BRONX COUNTY

TRIAL TERM : PART XII

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THE PEOPLE OF THE STATE OF NEW  
YORK

-against-

RUDOLPH SANTOBELLO,

Defendant.

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Ind. No. 3024-68

Promoting Gambling First Degree

Bronx, June 16, 1969

BEFORE: HON. CHARLES MARKS,

JUSTICE

APPEARANCES:

FOR THE PEOPLE: BURTON B. ROBERTS ESQ.  
District Attorney, Bronx  
County

BY: DAVID GREENFIELD, ESQ.  
Assistant District Attorney

*Plea*

FOR THE DEFENDANT; M. FRUCHTMAN, ESQ.

Miriam Benson, C.S.R.  
Official Court Reporter

[2] The Court Clerk: People versus  
Rudolph Santobello, nine on pretrial.

(Defendant present.)

(Mr. Rotker standing by.)

Mr. Fruchtmann: If your Honor please,  
this defendant desires to withdraw his plea  
of not guilty heretofore entered and offers  
to plead guilty to the crime of possession  
of gambling records as a misdemeanor,  
what's the section?

Mr. Greenfield: Under second count.

Mr. Fruchtmann: Pleads guilty of pos-  
session of gambling records, misdemeanor  
under the second count of the indictment to  
cover the indictment.

The Court: What is it?

Mr. Greenfield: Possession of gambling  
records in the second degree, Class A mis-  
demeanor.

People recommend acceptance of the of-  
fered plea by the defendant.

The facts of the case are briefly this:  
The defendant on the 13th day of November  
1968 did in Bronx County possess with knowl-  
edge of the contents thereof, certain slips

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of mutual race horse policy, the number of plays on the slips was in the amount of more than 500, your Honor.

Because of the facts in the case and the defendant's desire to plead guilty before the Court, the People do [3] recommend acceptance of his offered plea.

The Court: Let me see the indictment, please.

(Same handed to the Court.)

The Court: Is your name Rudolph Santobello?

The Defendant: Yes.

The Court: And did you hear your lawyer make a statement to me to the fact that you are now withdrawing your previous plea of not guilty?

The Defendant: Yes.

The Court: Do you now withdraw your previous plea of not guilty?

The Defendant: Yes.

The Court: And did you also hear your lawyer make a statement to me to the effect that in your behalf a plea of guilty is being entered to the crime of possession of gambling records, a Class A misdemeanor in the second degree, under the second count of the indictment, that plea to cover the entire indictment? Did you hear him make that statement?

The Defendant: Yes.

The Court: And do you now plead guilty to the crime of possession of gambling rec-



*Plea*

ords in the second degree, a Class A misdemeanor under the second count of the indictment to cover the indictment?

[4] The Defendant: Yes.

The Court: And is this plea of guilty being made of your own free will?

The Defendant: Yes.

The Court: And did you hear the district attorney make a statement to the court as to the facts and circumstances under which this crime was committed by you?

The Defendant: Yes.

The Court: And are those facts true and correct?

The Defendant: Yes, sir.

The Court: In view of the recommendation of the District Attorney and the facts submitted to the Court, the Court will accept a plea of guilty on the part of the defendant to the crime of possession of gambling records, second degree, a Class A misdemeanor under the second count of the indictment; that plea to cover the entire indictment.

(Defendant duly sworn; pedigree taken; and the following statement made: "See yellow sheet".)

The Court: June 30th for sentence. Probation Department.

The foregoing is certified to be true and correct.

s/ Miriam Benson C.S.R.

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*Plea*

SUPREME COURT OF THE STATE OF NEW YORK  
BRONX COUNTY : TRIAL TERM PART XVI

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THE PEOPLE OF THE STATE OF NEW  
YORK

-against-

RUDOLPH SANTOBELLO,

Defendant.

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Indictment No. 3024/69  
(On charge of Poss. Gambling  
Records as a Misdemeanor)

851 Grand Concourse,  
Bronx, New York 10451  
January 9, 1970.

B E F O R E:

HON. ABRAHAM J. GELLINOFF,  
Justice

A p p e a r a n c e s:

BURTON ROBERTS, ESQ.  
District Attorney, Bronx County  
For the People

*Plea*

BY: SEYMOUR ROTKER, Esq.,  
Of Counsel

JOSEPH ARONSTEIN, ESQ.  
For the Defendant

Herbert Kurtz,  
Court Clerk

ESTHER POINTER, C.S.R.  
Official Court Reporter

[2] Court Clerk: People of the State of  
New York vs. Rudolph Santobello.

Mr. Aronstein: Your Honor, I thought  
perhaps before the motion papers got here,  
we might acquaint Your Honor with the case.

Your Honor, on June 16, 1969 this defend-  
ant, who was then represented by Mr. Max  
Fruchtman, entered a plea of guilty, and I  
have a copy of the minutes here, of the sen-  
tence, a certified copy of the minutes of the  
sentence.

The defendant's lawyer said to the Court  
that he desired to withdraw a plea of not  
guilty, and plead guilty to the crime of  
Possession of Gambling Records, as a mis-  
demeanor, under the second count of the in-  
dictment, to cover the indictment. And then  
the Assistant made a statement of what was  
purported to be — the Assistant, Mr. Green-  
field, then made a statement of some of the  
facts of the case. He did not state all of the

*Plea*

facts. And he recommended the acceptance of that plea. And then the Court states — then his lawyer, the defendant's lawyer made a statement, and the Court talked about entering a plea to Possession of Gambling Records, a Class A Misdemeanor.

And then the Court said, "Do you now plead guilty [3] to the crime of Possession of Gambling Records in the Second Degree, a Class A Misdemeanor, under the second count of the Indictment?" The defendant said "yes". The Court said, "Is this plea of guilty being made of your own free will?" the defendant said, "Yes." "Did you hear the District Attorney make a statement to the facts and circumstances?" The defendant said "Yes." "Are these facts true?" "Yes." Then the Court said, "The Court will accept the plea of guilty on the part of the defendant, to the crime of Possession of Gambling Records, second degree."

Now I contend, Your Honor, that that plea is a plea of guilty to something that is not a crime. The statute makes it a crime to possess gambling records, Number One, two kinds of gambling records. One, knowingly, the most important part is the possession must be knowing the contents of the records.

In other words, a knowing possession. And if the defendant does not plead guilty to knowingly possessing gambling records, then he is not pleading guilty to a crime.

Number Two, the Statute makes two separate, distinct crimes, requiring two

*Plea*

separate and distinct offers of proof to establish these crimes. One is the [4] crime of engaging in bookmaking, and one is the crime of knowingly possessing policy or lottery records or writings.

Now it is my contention that the plea of guilty is not a plea of guilty to a crime, and therefore, this Court is without jurisdiction to impose any sentence, for the reason that the defendant did not plead guilty to a crime.

Now it is true, I made a motion before Judge Marks to withdraw the plea, and that motion was denied. No order has been entered, as far as I know, and I don't really recall whether the Court at that time, in denying the motion, stated that this was the decision and order of the Court. I don't recall whether he said that. However, I've never been served with any copy of any order, or decision, with notice of entry.

Now Number Two, after this plea of guilty, there were motions made. One, to inspect the Grand Jury minutes, one for a motion to suppress the evidence, on the ground it was obtained in violation of the constitutional rights of this defendant, and another motion — no, just those two motions, besides the motion to vacate and set aside the plea of guilty.

[5] Your Honor, I contend that under the case of Kaufman vs. The United States, cited by the United States Supreme Court, I don't have the citation, but I happen to have a copy

*Plea*

of the opinion here. The United States Supreme Court in that case said that a defendant can move to suppress evidence before trial, during trial, and after trial. In other words, as post-conviction relief, even after sentence has been pronounced, to bring a motion to suppress evidence.

And the Court says, "this philosophy inheres in our recognition of state prisoners' post-conviction claims of illegal search and seizure. Plainly, the interest in finality is the same with regard to both federal and state prisoners. With regard to both, Congress has determined the full protection of their constitutional rights require the availability of the mechanism for collateral attack. The right then is not merely to an immediate oral forum, but to the full and fair consideration of constitutional claims.

The availability of post-conviction relief serves significantly to secure the integrity of proceedings at or before trial, and on appeal. No such service is performed by extending rights retroactively.

Thus, collateral relief, unlike retroactive relief, [6] contributes to the present vitality of all constitutional rights, whether or not they bear on the integrity of the fact-finding process."

Now I say that under this case, this defendant has a right to make a motion not only to suppress the evidence, but also to inspect the Grand Jury minutes. And if the indictment was founded on illegal evidence,

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then the indictment must fall, at any time before a trial is completed. And a trial is not complete until sentence is pronounced, I contend.

Now I just want to say this to Your Honor. This very same question is going to be decided by the Court of Appeals, because I have a case wherein I was granted leave to go to the Court of Appeals, by Judge Scilleppi. Of course, it hadn't been heard yet. And one of the points raised was that we made a motion after a jury's verdict, to suppress evidence. And the Court at that time stated that the place to make the motion would be upon the appeal, if any appeal is taken. That was the decision of the Court.

This case went to the Appellate Division. They affirmed no opinion, so I don't know whether or not they passed on this question or not, Judge. But anyway, this case, wherein this very question is going to be [7] raised, will be raised in the Court of Appeals.

Now for that reason, I would like to have this sentence adjourned for a reasonable time; so that I could perhaps get a decision from the Court of Appeals on this point.

The Court: All right. The application for an adjournment of sentence is denied.

Mr. Aronstein: All right.

The Court: You have an exception.

Mr. Aronstein: All right. Now how about my motions?

The Court: The Court is very much impressed with the quotations that you made

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from the United States Supreme Court decision. The Court does not take issue with the philosophy expressed in that Kaufman decision. But we have here a case where motions were, in fact, made, prior to the taking of a plea, and then while the motions were pending, a plea was taken. The result being, that the motions are, in fact, rendered academic, by the taking of the plea.

Mr. Rotker: If I could interject, the motions specifically to suppress was withdrawn on June 30, 1969, Judge.

[8] The Court: All right. So that —

Mr. Aronstein: But the point is this —

The Court: The point is this, I'm trying to make a record for you, —

Mr. Aronstein: Yes, Your Honor.

The Court: — so that you can — you can review this Court's action. So I'll make it specifically.

The Court rules that by the taking of the plea, these motions are deemed to have been abandoned, and if you want to renew them, no one can preclude you from renewing them, but you will have to do it in the proper way, and in the proper manner. But I will not give you an adjournment to enable you to make those motions.

Mr. Aronstein: Your Honor, just to have the record clear, the motions were made subsequent to the taking of the plea. Those motions are now pending in this court. They were on the calendar December 15th. I believe through a mistake, they were marked off, because they had been on two or three



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times before, and adjourned, pending evidently, what may happen on the sentence. I don't know. But these motions are pending. I would like to have number one restored to the calendar here today, and [9] then ask Your Honor to make the decision, with respect to those motions.

If Your Honor rules that those motions are waived, the motions that are pending before this Court are waived, by the fact that a plea of guilty was entered, well then, I just have to abide by Your Honor's ruling, and take an exception.

Now that's what I would ask Your Honor to pass upon.

The Court: So I'm ruling that the plea of guilty waived the further motion, and made the further motions academic.

Mr. Aronstein: Yes.

The Court: And you take an exception to that ruling.

Mr. Aronstein: Yes.

The Court: You maintain that the ruling is contrary to the decision of the United States.

Mr. Aronstein: Now there is just one other thing I want to put on the record, and that is the case of McCarthy vs. The United States, which deals directly with a plea. And I want to state that in the McCarthy case, the Court has stated that the — "The failure of the Court itself, to before accepting [10] a plea of guilty, to advise the defendant to first ascertain what the facts are — advise the defendant as to the law, so the Court will make sure that the defendant un-

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derstands what the law is; he understands what he is pleading guilty to; he understands that by a plea of guilty he is waiving his right to a jury trial.

If Your Honor will bear with me for just a moment.

The Court: Yes. He's waiving his right to have the witnesses against him confront him, he's waiving the right to a jury trial, he's waiving all of his constitutional rights; and you say it's a judge's duty to make sure that when he pleads, he knows that he is waiving those rights.

Mr. Aronstein: I say —

The Court: All of those rights, including those that you haven't mentioned, and including those that aren't even mentioned in the McCarthy decision.

Mr. Aronstein: So I contend —

The Court: So you cover it.

Mr. Aronstein: But I contend that under the McCarthy case, Your Honor, that the Court is under a duty to —

The Court: To make sure that the defendant knows.

[11] Mr. Aronstein: Knows precisely what he is pleading guilty to; knows what the law is.

The Court: And knows what rights he is waiving.

Mr. Aronstein: And knows what penalty he may incur by his plea of guilty.

The Court: All right.

Mr. Aronstein: Knows that he is waiving his right to a jury trial. And I contend that in this case, none of those things happened.

*Plea*

The Court: All right. All right. I've got your contention, and everything you have to say is on the record.

Your motions are denied. You have an exception. Your record is complete. Your position is complete.

Arraign him for sentence.

Court Clerk: Rudolph Santobello, is there any legal cause why sentence should not be pronounced against you?

Mr. Aronstein: Just a moment.

The Court: Well, on legal cause, Mr. Aronstein — Mr. Aronstein, on legal cause you repeat the same arguments, and the same grounds, that you have already made, with the same force and effect as though repeated now.

[12] Mr. Aronstein: Yes, Your Honor.

The Court: And in addition, if you have anything to add, that you haven't said, you can say that too. I think, though, you have been pretty thorough.

Mr. Aronstein: I don't believe, Your Honor, that there is anything that I can add to what I have stated before. And I ask Your Honor for leave to adopt what I've said before, as the legal ground as to why sentence should not be pronounced.

The Court: Your application is granted. Everything you have said until now is deemed said now, same arguments, same objections, same motions, and the same rulings, and you have an exception.

Mr. Aronstein: Thank you.

Court Clerk: Have we now completed all

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the legal —

The Court: Yes.

Court Clerk: Rudolph Santobello, what have you to say before sentence is now pronounced against you according to the law?

Your attorney may speak for you.

Mr. Aronstein: You want me to speak?

The Defendant: Yes.

Mr. Aronstein: Your Honor, I know very well that there is a probation report in this case. I'm sure [13] that Your Honor has read and considered it. Of course, I have to maintain the same position. It is our contention that the defendant did not plead guilty to any crime. However, I assume it would be the District Attorney's position that he pleaded guilty to the crime of Knowingly Possessing Policy Writings, as a Class A Misdemeanor; and the circumstances of this particular case are that some man put some papers in a compartment in the wall, some police officer went over and took those papers, put some identifying marks in those papers, and put the papers back, and that this defendant came later and took those papers, and was thereupon arrested, by this police officer, who searched him and found the papers that he had previously marked, and then conducted a search, which I considered to be an illegal search, of the automobile which he was in, and found some other records in there, which were made a part of this case.

So far as I can see, this case is nothing more than an ordinary policy case, which I think should have been a misdemeanor in the

*Plea*

first place. And for some reason or other, they made it a felony charge.

The Court: All right.

Mr. Rotker: May I be heard; Your Honor?

[14] Your Honor, as counsel said, in the full and complete probation report, the Probation Department report is something, of course, which is an aid to the Court, to determine what sentence should be imposed upon a defendant; for his illegal conduct, after a defendant has been found or pleads guilty.

I have no idea what is in that probation report, but I do know something about the defendant Santobello, and I'm sure that there is nothing in that report, based upon my knowledge, not of the report, but of the defendant Santobello, that would in any way commend him for your mercy or other consideration, with regard to the imposition of sentence here.

Your Honor, defendant is a man who has had a criminal record going back to 1950. He has been in trouble since being a youngster, and served fourteen years in jail, or thereabouts, for the brutal homicide of a police officer, acting in concert with another man.

After he got out, he probably became some sort of a hero, and then went into the less violent type of activity, but engaged in illegal gambling activity, which is indicated. I don't know if there was a conviction, but at least by an arrest in 1966, and [15] a subsequent arrest in 1969 for the charge for which the defendant is presently

*Plea*

before the Court.

In the interim, he is also called as a witness before a grand jury in New York County. The grand jury in New York County was seeking to ascertain whether or not a firm called Service Loaders did in fact hire various indigent individuals, and pay them certain amounts of money for activities that these indigent individuals were doing for Service Loaders, and in fact, Santobello and some ten or eleven or twelve other gamblers, men who have long histories of gambling activity, keep them on their payrolls.

This defendant, when he was arrested, had \$636.00 on his person. I am sure that he has no legitimate source of business income.

It is the People's contention, Your Honor, based upon law enforcement, based upon every conceivable type of investigative ability, that this defendant is involved with organized criminal activity, in the illegal gambling activity. He also has some connection, Your Honor, to a bar in Bronx County, the Chez Joey Bar, up on Eastchester Road, in Bronx County.

The man has no apparent visible source of income, [16] and yet seems to have fantastic amounts of money, and is engaged in these type of activities.

Your Honor, there is nothing that commends him for the Court's consideration. The People would ask that the Court deal stringently and harshly with this defendant, by imposing a maximum sentence that the law

*Plea*

can impose in such a case.

Mr. Aronstein: Now if the Court pleases, may I reply?

The Court: Sure.

Mr. Aronstein: Mr. Fruchtman, the lawyer who was present, and was this defendant's attorney, at the time of the plea, told me, and told me that he will testify under oath, that at the time he took the plea, Mr. Greenfield, the Assistant District Attorney told him that the District Attorney will not make any recommendations, with respect to the sentence. And I therefore, ask that at this time this Court adjourn this sentence for a short period of time, I'll produce Mr. Fruchtman, and — in court, and have him testify in open court, as to what —

Now if what Mr. Fruchtman says is true, then the plea was obtained by fraud and deception, by the District Attorney, if it was obtained on the expressed [17] promise that the District Attorney would make no recommendation.

Mr. Rotker: Your Honor, I have the plea taking minutes here. There is nothing to indicate whatsoever, that that in fact took place.

The Court: All right.

Mr. Aronstein: I don't say it's in the sentencing minutes.

Mr. Rotker: In the plea minutes.

Mr. Aronstein: This was a discussion between Mr. Fruchtman and the District

*Plea*

Attorney.

The Court: All right.

Mr. Aronstein: Prior to the acceptance of the plea.

The Court: Mr. Aronstein, I am not at all influenced by what the District Attorney says, so that there is no need to adjourn the sentence, and there is no need to have any testimony. It doesn't make a particle of difference what the District Attorney says he will do, or what he doesn't do.

I have here, Mr. Aronstein, a probation report. I have here a history of a long, long serious criminal record. I have here a picture of the life history of this man. And I come to the conclusion, regardless [18] of what the District Attorney —

You want to interrupt me, I'm ready to make my sentence, and there is nothing further to be said. But if you want to say something, I'll interrupt the sentence, and say it.

Mr. Aronstein: I'm sorry.

The Court: Say it. Because when I get finished, there is nothing for you to say. So if you want to say it, say it now.

Mr. Aronstein: No. I don't know why I raised my hand.

The Court: You finished?

Mr. Aronstein: Probably just a reaction.

The Court: You finished?

Mr. Aronstein: Yes.

The Court: Nothing more to say?

Mr. Aronstein: Yes.

The Court: All right. "He is unamenable



*Plea*

to supervision in the community. He is a professional criminal." This is in quotes. "And a recidivist. Institutionalization —"; that means, in plain language, just putting him away, "is the only means of halting his anti-social activities", and protecting you, your family, me, my family, protecting society. "Institutionalization". Plain language, put him behind bars.

[19] Under the plea, I can only send him to the New York City Correctional Institution for men for one year, which I am hereby doing.

The sentence is, the defendant be committed to the New York City Correctional Institution for men for one year.

You have an exception to the Court's ruling. You have an exception to the Court's procedure. You deny any foundation for the Court's statements, on the record, at the time of sentence. You object to them.

Your objection is overruled. You have an exception.

You can now say anything else you want to protect the record.

Mr. Aronstein: All right. Well Number One, will Your Honor grant a stay of the sentence until Monday, so he can arrange

— The Court: Application denied.

Mr. Aronstein: All right. Could I approach the Bench with the Assistant?

The Court: Yes.

*Plea*

(Whereupon, at this time a discussion was held, off the record, between the Court and the Assistant District Attorney and Mr. Aronstein, following which [20] these proceedings took place:)

Court Clerk: Rudolph Santobello, your attorney informed you of your right to appeal, and the manner in which you go about making such an appeal?

The Court: All right. Let's go ahead.

Court Clerk: I have to get an answer to this question.

Mr. Aronstein: Oh, about the appeal.

Court Clerk: His answer? I asked him has his attorney informed him of his right to appeal, and the manner in which you go about making such an appeal.

Has your attorney informed you of that?

The Defendant: Yes, sir.

Court Clerk: All right. That completes the sentence.

(The above is certified to be a true and accurate verbatim transcript of the minutes in this case.)

s/ Esther Pointer, C.S.R.  
Official Court Reporter

**Decision Granting Certificate of Reasonable  
Doubt**

**SUPREME COURT : BRONX COUNTY  
SPECIAL TERM : PART I**

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**THE PEOPLE OF THE STATE OF NEW  
YORK,**

**Respondent,**

**-against-**

**RUDOLPH SANTOBELLO,**

**Defendant-Appellant.**

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**Filed: Jan. 15, 1970**

**TYLER, J.:**

This is an application for a certificate of reasonable doubt under Section 527, et seq., of the Code of Criminal Procedure. The defendant was convicted by plea of the crime of knowingly possessing criminal records, under Section 225.15 of the Penal Law. A maximum sentence of one year was imposed by this Court on January 9, 1970.

An examination of the specifications of error assigned by the defendant is not persuasive that a reasonable arguable question should be passed

*Decision Granting Certificate of Reasonable  
Doubt*

upon by an appellate court in this case, save one. The maximum sentence of one year imposed herein may well be found by the appellate court to be excessive. In the event that the appellate court should make such a finding, it is probable that the defendant will have substantially completed his sentence and the question of the excessiveness of the sentence thus rendered moot.

Therefore, in the exercise of discretion, I am constrained to grant the certificate of reasonable doubt and will hear counsel for the defendant and the People on the question of bail.

Dated: January 15, 1970

A.R.T.  
J.S.C.

**Judgment of Affirmance of Appellate Division,  
First Judicial Department**

At a term of the Appellate Division of the Supreme Court held in and for the First Judicial Department in the County of New York, on the 1st day of December, 1970

Present —

Justice Presiding,

HON. SAMUEL W. EAGER,

*Judgment of Affirmance of Appellate Division,  
First Judicial Department*

“ LOUIS J. CAPOZZOLI,  
“ OWEN McGIVERN,  
“ ARON STEUER,  
“ GEORGE TILZER,  
Justices.

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THE PEOPLE OF THE STATE OF NEW YORK,

Respondent,

-against-

RUDOLPH SANTOBELLO,

Defendant-Appellant

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An appeal having been taken to this Court by the defendant-appellant from the judgment of the Supreme Court, Bronx County (Gellinoff, J.), rendered on January 9, 1970, convicting him of the crime of Possession of Gambling Records in the Second Degree [Penal Law §225.15]; and defendant-appellant having also brought up for review an order of said Court denying a hearing upon a motion to suppress evidence, an order denying a hearing on a motion for an inspection of the minutes of the grand jury, and an Order denying the motion to withdraw the plea of guilty entered on June 16, 1969: and said appeal having been argued

*Judgment of Affirmance of Appellate Division,  
First Judicial Department*

by Mr. Irving Anolik, of counsel for the appellant,  
and by Mr. Daniel J. Sullivan, of counsel for the  
respondent; and due deliberation having been had  
thereon,

It is unanimously ordered and adjudged that the  
judgment and orders so appealed from be and the  
same are hereby, in all things, affirmed.

ENTER:

HYMAN W. GAMSO  
Clerk

**Certificate Denying Leave to Appeal to  
Court of Appeals**

STATE OF NEW YORK  
COURT OF APPEALS

Before:

HON. ADRIAN P. BURKE,

Associate Judge

[TITLE OMITTED IN PRINTING]

I, ADRIAN P. BURKE, Associate Judge of the  
Court of Appeals of the State of New York, do  
hereby certify that, upon application timely made  
by the above named appellant for a certificate  
pursuant to §520 of the Code of Criminal Pro-  
cedure, and upon the record and proceedings herein,  
there is no question of law presented which ought

*Certificate Denying Leave to Appeal to  
Court of Appeals*

to be reviewed by the Court of Appeals and permission to appeal is hereby denied.

Dated at New York City, New York  
February 4th, 1971

s/ ADRIAN P. BURKE  
Associate Judge

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